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FISCAL IMPACT REPORT

ORIGINAL DATE 1/23/2007
 LAST UPDATED 2/9/2007 HB _____

SPONSOR Neville

SHORT TITLE Immunity From Civil Action for Use of Force SB 152/a SPAC

ANALYST Schuss

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

Relates to, Conflicts with HB 163, SB 39

SOURCES OF INFORMATION

LFC Files

Responses Received From

- Attorney General's Office (AGO)
- Department of Public Safety (DPS)
- Public Defender Department (PDD)
- Administrative Office of the Courts (AOC)

No Response Received

Administrative Office of the DA

SUMMARY

Synopsis of Amendment

The amendment changes Section 1, Subsection A of SB 152 to read:

A person who uses force that is justified pursuant to Section 30-2-7 NMSA 1978, or who is otherwise found to have acted in self-defense or defense of another *whether or not the person causes property damage, injury or death*, is immune from civil action for the use of such force unless the person knew or reasonably should have known that the person against whom the force was used was a law enforcement officer acting in the scope of official duties.

Synopsis of Original Bill

Senate Bill 152 provides immunity from civil action to persons using force that is deemed justifiable homicide pursuant to NMSA Section 30-2-7, or who have otherwise acted in self-defense or defense of another. The bill requires the court to award reasonable costs and attorney fees as well as compensation for loss of income and other reasonable expenses to a defendant if that person is found to be immune under the provisions of the bill. The bill exempts the use of force against police officers acting within the scope of their duties from its immunity provisions if the person using force knew or reasonably should have known that they were a law enforcement officer.

FISCAL IMPLICATIONS

The Administrative Office of the Courts notes that there will be a minimal administrative cost for statewide update, distribution and documentation of statutory changes. Any additional fiscal impact on the judiciary would be proportional to challenges to verdicts and awards, based on claims of self-defense. New laws, amendments to existing laws and new hearings have the potential to increase caseloads in the courts, thus requiring additional resources to handle the increase.

The Public Defender Department states that the passage of this bill might actually reduce their workload infinitesimally.

SIGNIFICANT ISSUES

The Attorney General’s office states that current law already provides immunity from liability for damages incurred as a consequence of the commission of a crime or flight by the plaintiff, or from the use of force or justifiable homicide. NMSA Section 31-23-1.

The bill provides immunity from “civil action”, which implies a prohibition against bringing or maintaining a civil lawsuit. However, other state laws clearly confer immunity from civil *liability*, which appears to be distinguishable from bringing a cause of action. See for example NMSA Section 59A-4-21 “*No cause of action shall arise nor shall any liability be imposed*”; NMSA Section 31-23-1 “*No person shall be liable to a plaintiff in any civil action for damages*” etc.

The bill requires a court to award damages to a defendant found to be immune from “civil action”. However, such a requirement might usurp the authority of the courts to determine and award damages.

PERFORMANCE IMPLICATIONS

The Administrative Office of the Courts adds that the courts are participating in performance-based budgeting. As a result of challenges to verdicts and awards, this bill may have an impact on the measures of the district courts in the following areas:

- Cases disposed of as a percent of cases filed
- Percent change in case filings by case type
- Clearance Rate

CONFLICT, RELATIONSHIP

Conflicts/Relates to SB 39, HB 163

TECHNICAL ISSUES

The Public Defender Department states that the bill appears to be similar to the current Immunity from Civil Damages statute (NMSA 1978, § 31-23-1), which presently provides:

31-23-1. Civil action; crime; damages; immunity

No person shall be liable to a plaintiff in any civil action for damages if by a preponderance of the evidence the damages were incurred as a consequence of:

A. the commission, attempted commission or flight subsequent to the commission of a crime by the plaintiff; and

B. the use of force or deadly force by the defendant which is justified pursuant to common law or the law of the state.

NMSA 1978, § 31-23-1

BS/mt